IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5860 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMIN ENGINEERING & MOLDING CO.

Versus

SHIVPRASAD MATADDIN

Appearance:

1. Special Civil Application No. 5860 of 2003

MR MINESH V PATEL for Petitioner No. 1

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 15/07/2004

ORAL JUDGEMENT

1.0 The petitioner herein has challenged the order dated 21/03/03 passed by the Presiding Officer of the Labour Court, Ahmedabad, in Recovery Application No.2895/1989, whereby, the petitioner was directed to pay Rs.10,350/- towards weekly leave and a cost of Rs.1,000/-

was imposed on the petitioner towards expenses.

2.0 The respondent workman joined the petitioner firm as a Turner on 03/12/79 and voluntarily left the job on 20/03/80. Thereafter, he preferred an application being Reference (LCA) No.670/1981 before the Labour Court, Ahmedabad, claiming reinstatement with full back wages. The said application came to be allowed by order dated 30/09/79, whereby, it was direted to reinstate the respondent workman, but, without any back wages.

2.1 It is the case of the petitioner that pursuant to the order dated 30/09/79, the petitioner firm called upon the respondent workman to resume duty by letter dated 19/01/99. But the respondent workman did not resume duty. After a lapse of about ten years from the date of the award, the respondent workman filed application being Recovery Application No.2895/1989 for bonus, leave encashment etc. against the petitioner firm. The Labour Court by order dated 21/03/03 disposed of the said application with the aforesaid directions. Hence, this petition.

3.0 Mr.M V Patel learned advocate for the petitioner firm has submitted that the Labour Court has a very limited jurisdiction under Section 33-C(2) of the Industrial Disputes Act, 1947. He has submitted that the workman has not ascertained his right about weekly leave etc. Apart from that, right from 20/03/80 till the reinstatement was granted by the Labour Court on 30/09/79, the respondent workman has never gone before the petitioner firm. Even after Notice dated 19/01/98, the respondent workman has not resumed duty. He has, therefore, stated that the order passed by the Labour Court is without jurisdiction under Section 33-C(2) of the I.D. Act.

3.1 Mr.Patel for the petitioner has further submitted that u/s.33-C(2) of the I.D.Act, the Labour Court has a very limited jurisdiction to execute the award passed by the competent authority. The Labour Court cannot go into the ascertainment of the rights of the parties u/s.33-C(2) of the I.D. Act.

4.0 Mr.Patel for the petitioner has relied upon a decision of this Court in the case of Milan Cinema and Anr. Vs. Maganlal Nathalal Mistry, reported in 1999 Labour Law Journal page 220, wherein it is held that proceeding under section 33-C(2) is in the nature of execution proceedings where right to receive money or benefit is already determined or admitted and the

question is only to the quantum of money or benefit which is to reach the recipient. The question as to entitlement is beyond the scope of enquiry under Section 33-C(2). The Labour Court has therefore no jurisdiction to entertain application under Section 33-C(2) and embark upon an enquiry once issue clearly before it was about entitlement of the claimant to any right. In the present case when the petitioner has disputed the relationship of master and servant, the Labour Court has committed a serious error in entertaining the application. The right to receive money or benefit is not determined or admitted and therefore the question as to entitlement is beyond the scope of enquiry under Section 33-C(2).

4.1 Mr.Patel has also relied upon a decision of this Court in the case of Naranji Peraji Trans. Co. Vs. R.B. Waghela, reported in 1998(2) GLR 984, wherein it is specifically held that the Labour Court could not have entertained the application since it involved task of adjudicating whether workman actually worked on Sundays and whether he was entitled to the other claims. In the present case also there was no adjudication as to the entitlement of the workman in respect of certain leave and other benefits as claimed by him. In absence of such prior adjudication the Labour Court should not have entertained the application of the petitioner which is contrary to law.

4.2 Mr.Patel has next relied upon a decision of this Court in the case of Gujarat Water Supply and Sewerage Board Vs. Ketanbhai Dinkarray Pandya, reported in 2003(3) GLR 2281. In that decision this Court held that recovery application to the Labour Court claiming overtime without the same being adjudicated by the authority under the Minimum Wages Act, is not directly maintainable under section 33-C(2) of the Act. Therefore the order of the labour court was set aside.

5.0 This matter was earlier listed before this Court on 30/06/04 and was previously adjourned for fifteen times, with a view to see that some arrangement was made by the respondent workman to appear in the matter. But he has not turned up. Earlier also this Court had while passing order dated 14/10/03 had given an opprotunity to the respondent workman to file appropriate application, but, the respondent workman has not thought it proper to approach this Court by way of any application.

6.0 I have gone through the averments made in the petition. In the present case, the claim is in respect of weekly leave, bonus etc.. The competent authority

viz. the Payment of Wages Authority or any other authority has not decided the issue and the respondent workman has straightaway approached the Labour Court under section 33-C(2) of the Act. However, in view of the law laid down by this Court in the aforesaid decisions, the Labour Court ought not to have entertained such application in absence of any prior adjudication. Therefore, the impugned order was passed without jurisdiction which is required to be quashed and set aside.

7.0 For the foregoing reasons, this petition is allowed. The order of the Labour Court, Ahmedabad dated 21/03/03 passed in Recovery Application No.2895/1989 is quashed and set aside. Rule is made absolute accordingly with no orders as to costs.

(K. S. Jhaveri, J.)

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